

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 959

Introduced by Carlson, 38; Brasch, 16; Christensen, 44; Schilz, 47.
Read first time January 16, 2014

Committee:

A BILL

1 FOR AN ACT relating to water storage reservoirs; to amend sections
2 46-241, 46-242, and 46-2,119, Reissue Revised Statutes of
3 Nebraska; to provide a permit application exemption; to
4 harmonize provisions; and to repeal the original
5 sections.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-241, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 46-241 (1) Every person intending to construct and
4 operate a storage reservoir for irrigation or any other beneficial
5 purpose or intending to construct and operate a facility for
6 intentional underground water storage and recovery shall, except as
7 provided in subsections (2) ~~and (3)~~, and (4) of this section and
8 section 46-243, make an application to the department upon the
9 prescribed form and provide such plans, drawings, and specifications
10 as are necessary to comply with the Safety of Dams and Reservoirs
11 Act. Such application shall be filed and proceedings had thereunder
12 in the same manner and under the same rules and regulations as other
13 applications. Upon the approval of such application under this
14 section and any approval required by the act, the applicant shall
15 have the right to construct and impound in such reservoir, or store
16 in and recover from such underground water storage facility, all
17 water not otherwise appropriated and any appropriated water not
18 needed for immediate use, to construct and operate necessary ditches
19 for the purpose of conducting water to such storage reservoir or
20 facility, and to condemn land for such reservoir, ditches, or other
21 facility. The procedure to condemn property shall be exercised in the
22 manner set forth in sections 76-704 to 76-724.

23 (2) Any person intending to construct an on-channel
24 reservoir with a water storage impounding capacity of less than
25 fifteen acre-feet measured below the crest of the lowest open outlet

1 or overflow shall be exempt from subsection (1) of this section as
2 long as there will be (a) no diversion or withdrawal of water from
3 the reservoir for any purpose other than for watering range livestock
4 and (b) no release from the reservoir to provide water for a
5 downstream diversion or withdrawal for any purpose other than for
6 watering range livestock. This subsection does not exempt any person
7 from the requirements of the Safety of Dams and Reservoirs Act or
8 section 54-2425.

9 (3) Any person intending to construct a reservoir,
10 holding pond, or lagoon for the sole purpose of holding, managing, or
11 disposing of animal or human waste shall be exempt from subsection
12 (1) of this section. This subsection does not exempt any person from
13 any requirements of the Safety of Dams and Reservoirs Act or section
14 46-233 or 54-2425.

15 (4) Any reservoir with a maximum water storage capacity
16 of fifty acre-feet and constructed prior to 1973 is exempt from the
17 requirements of subsection (1) of this section if such reservoir is
18 maintained in accordance with department safety guidelines, not
19 altered to increase its storage capacity, and not utilized for
20 irrigation purposes. This subsection does not exempt any person from
21 any requirements of the Safety of Dams and Reservoirs Act or section
22 46-233 or 54-2425.

23 ~~(4)~~(5) Every person intending to modify or rehabilitate
24 an existing storage reservoir so that its impounding capacity is to
25 be increased shall comply with subsection (1) of this section.

1 ~~(5)~~(6) The owner of a storage reservoir or facility
2 shall be liable for all damages arising from leakage or overflow of
3 the water therefrom or from the breaking of the embankment of such
4 reservoir. The owner or possessor of a reservoir or intentional
5 underground water storage facility does not have the right to store
6 water in such reservoir or facility during the time that such water
7 is required in ditches for direct irrigation or for any reservoir or
8 facility holding a senior right. Every person who owns, controls, or
9 operates a reservoir or intentional underground water storage
10 facility, except political subdivisions of this state, shall be
11 required to pass through the outlets of such reservoir or facility,
12 whether presently existing or hereafter constructed, a portion of the
13 measured inflows to furnish water for livestock in such amounts and
14 at such times as directed by the department to meet the requirements
15 for such purposes as determined by the department, except that a
16 reservoir or facility owner shall not be required to release water
17 for this purpose which has been legally stored. Any dam shall be
18 constructed in accordance with the Safety of Dams and Reservoirs Act,
19 and the outlet works shall be installed so that water may be released
20 in compliance with this section. The requirement for outlet works may
21 be waived by the department upon a showing of good cause. Whenever
22 any person diverts water from a public stream and returns it into the
23 same stream, he or she may take out the same amount of water, less a
24 reasonable deduction for losses in transit, to be determined by the
25 department, if no prior appropriator for beneficial use is prejudiced

1 by such diversion.

2 ~~(6)~~(7) An application for storage and recovery of water
3 intentionally stored underground may be made only by an appropriator
4 of record who shows, by documentary evidence, sufficient interest in
5 the underground water storage facility to entitle the applicant to
6 the water requested.

7 Sec. 2. Section 46-242, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 46-242 (1) After the completion to the satisfaction of
10 the department of a storage reservoir for which a permit has been
11 obtained pursuant to section 46-241, any person proposing to apply to
12 beneficial use the water stored shall file with the department an
13 application for a permit particularly describing the use to which the
14 water is to be applied and, if for irrigation, describing the land to
15 be irrigated.

16 (2) Application may be made for a permit to appropriate
17 water for the irrigation of land lying both upstream and downstream
18 from a storage reservoir or intentional underground water storage
19 facility. Under an approved application for a permit to appropriate
20 water stored in a reservoir or facility for use on land upstream from
21 such reservoir or facility, water may be diverted from the stream by
22 the applicant and a compensating amount of water shall be released
23 from the reservoir or facility for the use of downstream
24 appropriators, but the rights of prior appropriators shall not be
25 adversely affected by such exchange of water.

1 (3) The owner of a storage reservoir shall have a
2 preferred right to make such application for a period of six months
3 from the time limited for the completion of such reservoir. The date
4 of the expiration of such period shall be endorsed upon the
5 application when allowed. If an application is made by a person other
6 than the owner of a reservoir at any time, the application shall not
7 be approved by the department until the applicant shows, by
8 documentary evidence, sufficient interest in such storage reservoir
9 to entitle the applicant to enough water for the purpose set forth in
10 the application.

11 (4) Application may be made for a permit to appropriate
12 water from a storage reservoir, subject to subsection (3) of this
13 section, or an intentional underground water storage facility,
14 subject to subsection ~~(6)~~(7) of section 46-241, for instream use of
15 water for recreation or fish and wildlife if the appropriation will
16 not prejudice the rights of any prior appropriator for a beneficial
17 use.

18 (5) An unapproved application for a permit pursuant to
19 this section which is pending on August 26, 1983, may be amended to
20 include use of stored water for intentional underground water
21 storage.

22 Sec. 3. Section 46-2,119, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 46-2,119 Instream appropriations shall be administered in
25 the same manner as prescribed by Chapter 46, article 2, for other

1 appropriations. Reservoirs shall not be required by the director to
2 release, for the benefit of an instream appropriation, water
3 previously impounded in accordance with section 46-241 or 46-243.
4 Reservoirs with storage rights senior to an instream appropriation
5 shall not be required to pass, for the benefit of that instream
6 appropriation, inflows that could be stored by such reservoir if the
7 instream appropriation were not in effect. Notwithstanding subsection
8 ~~(5)~~(6) of section 46-241, a reservoir with storage rights senior to
9 an instream appropriation also shall not be required to pass inflows
10 for downstream direct irrigation if the appropriation for direct
11 irrigation is junior to and would be denied water because of that
12 instream appropriation. Instream appropriations may be canceled as
13 provided in sections 46-229.02 to 46-229.05.

14 Sec. 4. Original sections 46-241, 46-242, and 46-2,119,
15 Reissue Revised Statutes of Nebraska, are repealed.